

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 8, 2016

Elisabeth A. Shumaker
Clerk of Court

In re: DARRELL W. COLLINS,

Movant.

No. 16-6195
(D.C. Nos. 5:08-CV-00524-M,
5:03-CV-00680-M & 5:99-CR-00216-M-2)
(W.D. Okla.)

ORDER

Before **KELLY, BRISCOE**, and **HARTZ**, Circuit Judges.

Darrell W. Collins seeks authorization to file a second or successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. For the following reasons, we deny authorization.

This is the second motion for authorization Mr. Collins has filed this year. Mr. Collins was designated a career offender under U.S.S.G. § 4B1.1 based on his prior convictions for burglary in the second degree and possession of a controlled dangerous substance with intent to distribute. In his first motion, Mr. Collins sought authorization to challenge the use of his burglary conviction to enhance his sentence based on the new rule of constitutional law announced in *Johnson v. United States*, 135 S. Ct. 2551 (2015), which invalidated the residual clause in the Armed Career Criminal Act.

The record showed, however, that Mr. Collins's conviction was for burglary of a dwelling, which is an enumerated offense in U.S.S.G. § 4B1.2's definition of "crime of violence," and therefore his sentence was not enhanced under the residual clause. *See*

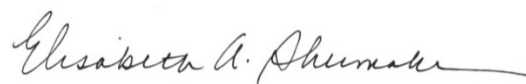
In re Collins, No. 16-6135, Order at 3 (10th Cir. June 6, 2016) (unpublished). We denied authorization because he failed to make a prima facie showing that *Johnson* applied to his case. *See id.*

In his current motion, Mr. Collins again relies on the new rule of constitutional law announced in *Johnson* and seeks authorization to challenge the use of his controlled substance offense to enhance his sentence. While it is appropriate to grant authorization for defendants who received enhanced sentences as career offenders based on the residual clause in § 4B1.2(a)(2)’s definition of “crime of violence,” *see In re Encinias*, 821 F.3d 1224, 1225-26 (10th Cir. 2016), the career offender guideline can be satisfied by “two prior felony convictions of either a crime of violence *or a controlled substance offense*.” U.S.S.G. § 4B1.1(a) (emphasis added). The definition of “crime of violence” uses the invalidated residual clause, but the definition of “controlled substance offense” does not. *Compare id.* § 4B1.2(a)(2) *with id.* § 4B1.2(b).

Under these circumstances, Mr. Collins cannot demonstrate the requisite connection between his claim and the new rule of constitutional law established in *Johnson*. A claim challenging the use of a controlled substance conviction as one of the predicate offenses for a career offender enhancement is not based on the holding in *Johnson*.

Accordingly, we deny Mr. Collins's motion for authorization. This denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a long horizontal flourish.

ELISABETH A. SHUMAKER, Clerk